

83-49-I

THE STATE OF NEW HAMPSHIRE

ATTORNEY GENERAL
GREGORY H. SMITH

DEPUTY ATTORNEY GENERAL
DEBORAH J. COOPER



ATTORNEYS
DANIEL J. MULLEN
JAMES D. CAHILL, III
RONALD F. RODGERS
JEFFREY R. HOWARD
G. DANA BISBEE
GREGORY W. SWOPE
PETER T. FOLEY
STEVEN M. HOURAN
EVE H. OYER
LESLIE J. LUDTKE
ROBERT P. CHENEY, JR.

THE ATTORNEY GENERAL
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

ASSISTANT ATTORNEYS GENERAL
JOHN T. PAPPAS
JAMES E. TOWNSEND
ANNE R. CLARKE
MARC R. SCHEER
DONALD J. PERRAULT
MARTIN R. JENKINS
PETER W. MOSSEAU
BETSY S. WESTGATE
EDWARD L. CROSS, JR.
MARTHA V. GORDON
PETER C. SCOTT
MICHAEL A. PIGNATELLI
BRIAN T. TUCKER
PAUL BARBADORO
BRUCE E. MOHL
JOHN A. MALMBERG
DOUGLAS L. PATCH
LORETTA S. PLATT

April 12, 1983

Mr. Francis X. Gardner
Division of Purchase and Property
State House Annex
Concord, New Hampshire 03301

Re: Automated Teller Machines in State Liquor Stores

Dear Mr. Gardner:

You have requested that this office review a proposed RFP for placing automated teller machines in state liquor stores. Under the terms of the RFP, the expenses associated with the equipment and space utilization will be borne by the bank. The state will receive a space rental charge based upon transaction volume. The issue raised by this RFP is whether the Liquor Commission, through the Division of Purchase and Property, may lease space in its stores to banks for the purpose of installing automated teller machines. We conclude that it may not.

The authority of the Liquor Commission to act is clearly delineated in the statutes. We have already advised the Commission that the statutes do not permit the sale of separately packaged merchandise but allow only the sale of liquor itself. There is no provision in the statutes authorizing the Commission to lease space in its stores to a private commercial business.

The related question, therefore, is whether the Division of Purchase and Property may lease out space in state liquor stores to banks to install automated teller machines. The Division's authority to lease space in state owned buildings acquired under RSA 4:29 or RSA 4:30 is limited by RSA 4:39, which provides that:




"All real estate acquired under the provisions of this chapter shall be held by the state for the purposes for which it was acquired, until otherwise ordered by the legislature."

Therefore, under this provision the Division of Purchase and Property may not lease space in state buildings to private commercial businesses, since state property can only be acquired for public purposes.

Although state liquor stores are not acquired under either RSA 4:29 or RSA 4:30, the same principles apply. The Liquor Commission must have specific legislative authority to acquire property. The enabling legislation generally provides that the Liquor Commission may acquire property only for the purpose of operating a liquor store. Clearly, leasing space to a commercial business is not within the purview of operating a liquor store. Since the use of the property is limited to the operation of a liquor store, the Division of Purchase and Property may not enter into a lease arrangement with a bank for the installation of an Automatic Teller Machine in a state liquor store.

Very truly yours,


Leslie J. Ludtke
Attorney, Division
of Legal Counsel

LJL:alh
83-49-I